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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHAN JARED ANDERSON,

Defendant and Appellant.

H043065

(Santa Cruz County

Super. Ct. No. F25697)

Defendant Nathan Jared Anderson was convicted by plea of one count of carjacking (Pen. Code, § 215, subd. (a)),¹ two counts of evading a peace officer (Veh. Code, § 2800.2), two counts of vehicle theft (Veh. Code, § 10851, subd. (a)), and one count of attempted carjacking (§§ 664, 215, subd. (a)). As part of his plea, defendant admitted enhancement allegations that he had served two prior prison terms (§ 667.5, subd. (b)), had a prior strike (§ 667, subds. (b)–(i)), and had one prior conviction for a serious felony (§ 667, subd. (a)), arson of a vehicle. Pursuant to the plea agreement, 13 remaining counts charged in the information were to be dismissed. The court sentenced defendant to 15 years 8 months in prison and imposed fines and fees.

We appointed counsel to represent defendant in this court. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), which stated the case and the facts but raised no specific issues on appeal. Appointed counsel

¹ Undesignated statutory references are to the Penal Code.

has identified the following issues for our examination:² Did the trial court abuse its discretion when it denied defendant's *Romero*³ motion and denied defendant's *Marsden*⁴ motion?

We notified defendant of his right to submit written argument on his own behalf within 30 days. After the 30 days had elapsed, we received three submissions from defendant. After reviewing the entire record, considering the questions posed by appellate counsel, and considering the letters from defendant, we will conclude there is no arguable issue on appeal and we will affirm the judgment.

I. FACTUAL BACKGROUND

Between October 8 and October 16, 2013, defendant engaged in a nine-day crime spree while under the influence of methamphetamine. After it was over, defendant was charged with 20 offenses, including four auto thefts, carjacking, attempted carjacking, four counts of receiving stolen property, five counts of evading a peace officer, resisting arrest, residential burglary, false imprisonment, possession of a controlled substance, and possession of drug paraphernalia.

A. Auto Theft, Carjacking, Evasion, and Uncharged Crimes on October 8, 9, and 10, 2013

Around 6:00 a.m. on October 8, Francisco Garcia went out to his driveway and turned on his 2000 Toyota Rav-4. Garcia left the car running to warm up and went back inside to finish getting ready for work. While Garcia was inside, defendant stole the Rav-4.

² As described in *People v. Kent* (2014) 229 Cal.App.4th 293, appellate counsel may file a *Wende* brief that suggests issues for review.

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

Around 10:38 p.m. the next day, Susan Yracheta drove her 2011 Honda Accord to her daughter's home on the outskirts of Watsonville. Yracheta's other daughter, Sarah Ellet-Williams, was with her. Yracheta parked in the driveway and left the car running while she took groceries into the house. Defendant parked the stolen Rav-4 on an adjacent street. As Yracheta was about to get back into the Honda, she heard a rustling in nearby bushes and saw defendant coming toward her. Defendant pushed Yracheta to the ground, jumped into the Honda, and backed it out of the driveway.

Ellet-Williams had just closed the trunk of the Honda when she heard the rustling noise and saw defendant rushing toward the car. In a panic, she tried to get back into the car. She had opened the passenger door part way when defendant started to back out of the driveway before speeding away. The movement of the car knocked Ellet-Williams down and dragged her five feet along the driveway and into the street.

Yracheta suffered bruising and a panic attack and was hospitalized for three days. Ellet-Williams complained of pain and swelling in her right elbow, right shin, and right shoulder. Both women's purses—containing cash, credit cards, and other items—were in the car.

Later that night, Sheriff Sergeant Randy Ragsac spotted the stolen Honda and initiated a traffic stop. After Sergeant Ragsac shone his spotlight on the Honda, it sped away. Sergeant Ragsac activated his lights and siren and gave chase. During an eleven-mile pursuit, both on the highway and through the town of Pajaro, defendant drove in excess of 100 miles per hour, sometimes on the wrong side of the road. When Sergeant Ragsac could no longer pursue defendant safely, he gave up the chase.

Defendant went to a grocery store in Gilroy the following morning and made two purchases for \$14.99 and \$433. He initially attempted to make the \$433 purchase using two of Ellet-Williams's credit cards; after they were declined, he used Yracheta's corporate credit card to complete the transaction. When defendant attempted to make a third purchase for \$379 using one of Ellet-Williams's credit cards, a store employee

became suspicious and asked him for identification. Defendant was not charged with any crimes based on unauthorized use or attempted use of the credit cards.

B. Evasion on October 11, 2013

Deputy Sheriff Wes Grant saw defendant driving the stolen Honda. Deputy Grant activated his lights and siren and tried to pull defendant over. Defendant did not stop and drove 60 miles per hour through a residential area. Deputy Grant pursued defendant for approximately five miles, onto Highway 1 and into Watsonville. Along the way, defendant drove in excess of 100 miles per hour, cut turns, drove on the wrong side of the road, passed a car on the left shoulder, ran two red lights, and almost collided with a bus. Deputy Grant gave up the chase when defendant drove into a school zone.

C. Evasion, Burglary, and Other Offenses on October 12, 2013

Defendant went to his friend James Morimoto's house in Watsonville and asked to leave a suitcase and a duffle bag there. Defendant was driving the black Honda. When Morimoto asked about the Honda defendant was driving, defendant said it was stolen. Morimoto agreed to keep the suitcase and the duffle bag. After defendant left, Morimoto called the police.

Capitola Police Officer Christian Thompson saw the stolen Honda on 41st Avenue and followed it onto Highway 1. The officer activated his lights and siren, but defendant did not stop. Officer Thompson followed the Honda for approximately five miles on the highway and into a residential area. During the pursuit, defendant drove in excess of 80 miles per hour, crossed over double yellow lines, and drove onto an island. There were several near collisions. Officer Thompson gave up the chase when defendant drove near a school where it was too dangerous to continue.

Around dusk that day, Amy Johnson was in the front yard of her parents' home in rural Watsonville, when she saw defendant back the stolen Honda up the driveway and into the open garage. Johnson did not know defendant. Defendant got out of the car,

carrying what appeared to be a black handgun, and said he needed a car. He also asked to use the phone and the bathroom. Johnson complied with his requests because she wanted to keep him calm. While inside the house, defendant took a shower and went into a bedroom, where he opened dresser drawers, a cabinet, and a window. Defendant left his shorts and T-shirt in the bathroom and took some clothes from the bedroom.

That evening, Deputy Sheriff Nicholas Baldrige went to Morimoto's house and examined the suitcase and duffle bag. The suitcase contained mail and other paperwork with defendant's name on them. The duffle bag contained items that belonged to Yracheta, Ellet-Williams, and others, including credit cards, checkbooks, driver's licenses, and a cell phone. Defendant's union card and jail identification card were also inside the duffle bag. While Deputy Baldrige was at Morimoto's home, defendant called Morimoto. Defendant told Morimoto where he was and said he needed help because he was extremely high.

Officers went to defendant's location and found the stolen Honda in the garage. Johnson came out and said defendant had locked himself in a bathroom with a gun. After the officers got Johnson to safety, defendant jumped off a second-floor balcony, and ran into the woods. Officers found a black airsoft gun in the Honda.

D. Auto Theft and Evasion on October 13, 2013

Defendant stole a 1994 Nissan Sentra that belonged to Nancy Camacho and Daniel Zetina from their home. That afternoon, defendant drove past California Highway Patrol Officer Chad Jessee in the Nissan, going over 100 miles per hour. Officer Jessee turned on his lights and siren and followed defendant for two to three miles, but defendant never stopped. During the pursuit, defendant crossed over double yellow lines to pass other vehicles and negotiate turns. Officer Jessee ended the pursuit when defendant began driving in the oncoming lanes through blind curves on a windy road.

E. Auto Theft on October 14, 2013

Augustine Morales parked his 1995 Honda Civic next to the body shop where he worked. He left the keys in the car, intending to work on it later that day. While Morales was inside the shop, defendant stole the Honda Civic and left the stolen Nissan nearby.

F. Auto Theft, Evasion, Attempted Carjacking, and Arrest on October 16, 2013

Around 8:30 a.m. on October 16, Monterey County Sheriff's deputies responded to a report that defendant was at a home in Monterey. When the deputies arrived, defendant ran into a wooded area. The deputies recovered the stolen Honda Civic at that address.

Later that morning, defendant went to the home of his stepmother, Barbara Panis, and asked her for a ride. He was disheveled and had cuts all over his body. Panis agreed and the two of them got into her Ford F-250 pick-up truck with a horse trailer attached. Panis, who was driving, stopped to buy gas. While defendant rested in the backseat, Panis went inside the gas station and asked the attendant to call the police. Panis got back into the truck and tried to stall to allow time for the police to arrive. When the officers arrived, Panis panicked and jumped out of the truck. Defendant jumped behind the wheel and drove the truck away.

During the ensuing police chase, defendant drove at high speeds along busy streets in heavy traffic, ran stop signs, drove on the wrong side of the road, and went the wrong way on a one-way street. The officers stopped traffic and deployed spikes strips. After defendant clipped the front of a CHP vehicle, the horse trailer became detached from the truck and tumbled into the roadway. Defendant continued driving. To stop defendant, one of the officers struck the truck in the rear, causing it to stall; the truck jumped the sidewalk and stopped in a parking lot. Defendant jumped out, ran up to a parked pick-up truck, grabbed the driver's side door, and struggled with the person seated in the driver's seat. Defendant ran from officers and was eventually arrested. In the search incident to

his arrest, officers recovered a bindle of methamphetamine, a methamphetamine pipe, and Camacho's driver's license and credit cards.

II. PROCEDURAL HISTORY

After a preliminary hearing, defendant was charged in a 20-count information with four auto thefts (Veh. Code, § 10851, subd. (a)), carjacking, attempted carjacking (§§ 215, subd. (a), 664), four counts of receiving stolen property (§ 496, subd. (d)), five counts of evading a peace officer (Veh. Code, § 2800.2), resisting arrest (§ 148, subd. (a)), residential burglary (§§ 459, 462, subd. (a)), false imprisonment (§ 236), possession of a controlled substance, and possession of drug paraphernalia (Health & Saf. Code, § 11377, subd. (a), and former § 11364.1, subd. (a)). The information also alleged that defendant had served four prior prison terms (§ 667.5, subd. (b)), had a prior strike conviction for arson (§§ 667, subds. (b)–(i); 1170.12), and had a prior serious felony conviction (§ 667, subd. (a)). Defendant pleaded not guilty to the charges and denied the enhancement allegations.

In April 2014, defense counsel declared a doubt as to defendant's competence to stand trial. Criminal proceedings were suspended pursuant to section 1368 and the court ordered a psychological evaluation by Thomas Reidy, Ph.D. Dr. Reidy concluded that defendant was not competent to stand trial. Among other things, Dr. Reidy opined that defendant had a significant addiction to methamphetamine that had interfered with his life for a number of years and was displaying an "underlying psychotic disorder apart from his drug addiction." The court found defendant incompetent and ordered him transferred to Atascadero State Hospital.

While the psychological evaluation was pending, defendant moved under section 995 to set aside five counts of the information for lack of probable cause. The court granted the motion in part and dismissed count 10, which alleged the false imprisonment of Johnson by force and violence (§ 236).

In July 2014, a state hospital psychiatrist opined that defendant was psychiatrically stable, that his psychosis was secondary to methamphetamine use, and that he was competent to stand trial. Based on that report, the court found defendant competent and reinstated criminal proceedings.

In August 2015, defendant pleaded no contest to one count of carjacking, two counts of evading a peace officer, two counts of vehicle theft, and one count of attempted carjacking, with a maximum possible sentence of 32 years in prison. He also admitted one prior strike (§ 667, subds. (b)–(i)), two prior prison terms (§ 667.5, subd. (b)), and one prior conviction for a serious felony (§ 667, subd. (a)), the arson. Pursuant to the plea agreement, the remaining 13 counts were to be dismissed after sentencing.⁵

The probation department reported that defendant had seven prior felony and five prior misdemeanor convictions as an adult, including driving without a license, failure to stop after an accident with property damage, receiving stolen property, possession of burglary tools, vehicle theft, petty theft with a prior, vandalism, fighting in public, battery, arson of property (a car), escaping from jail, and smuggling controlled substances into prison. He had been incarcerated or on probation most of his adult life. Defendant told the probation officer that in early October 2013, he was feeling suicidal after arguing with his father, was on methamphetamine during the entire crime spree, did not plan to hurt anyone, and did not understand his behavior. Since the crimes occurred at different times, the probation officer recommended consecutive sentencing with a total term of 31 years.

⁵ The terms of the plea agreement were set forth on Judicial Council form CR-101, “Plea Form, With Explanations and Waiver of Rights-Felony.” Paragraph 2.h. of the form lists the counts to be dismissed at sentencing. It is clear from the record that the parties and the court inadvertently omitted count 16 from the list in paragraph 2.h. of the form, and that the court intended to dismiss all 13 counts although we have found no order to that effect. Count 10 had already been dismissed when the court ruled on defendant’s section 995 motion.

Defendant asked the court to strike his prior strike conviction for arson. The court denied the *Romero* motion. At the conclusion of that hearing, defendant asked to withdraw his plea, and made a *Marsden* motion to have new counsel appointed, stating that he had not been able to communicate with his attorney. The court continued the matter to look into defendant's allegations. At the *Marsden* hearing a week later, the court denied the motion.

Defendant was sentenced to 15 years and eight months in prison. The court selected the carjacking (count 3) as the principal term and imposed the lower term of three years, doubled to six years for the strike prior, and added five years for the serious prior felony enhancement (§ 667, subd. (a)). On the two evasion counts (counts 5 and 17), the court imposed one-third of the middle term doubled to one year and four months for each, to be served consecutively. On the two vehicle thefts (counts 11 and 14), the court imposed the middle term of two years to be served concurrently. On the attempted carjacking (count 18), the court imposed the middle term of one year, eight months, to be served concurrently. The court imposed one additional year for each of the two prison priors (§ 667.5, subd. (b)).

The court imposed a minimum \$300 restitution fine (§ 1202.4, subd. (b)) and imposed but stayed a \$300 parole revocation restitution fine (§ 1202.45). The court also imposed a single \$30 court facility assessment (Gov. Code, § 70373) and a single \$40 court operation fee (§ 1465.8, subd. (a)(1)),⁶ with victim restitution to be determined.

⁶ Defendant was convicted of six counts. The court operations fee and court facility assessment are mandatory and must be imposed on each count of which the defendant is convicted. (§ 1465.8, subd. (a)(1); Gov. Code, § 70373; *People v. Woods* (2010) 191 Cal.App.4th 269, 272; *People v. Castillo* (2010) 182 Cal.App.4th 1410, 1415, fn. 3.) Thus, the court did not have the discretion to impose a court operations fee of less than \$240 and a court facility assessment of less than \$180 in this case. But no one raised this issue below and the People have not appealed. Our role on *Wende* review is to search the record for an arguable issue: one that has a reasonable potential to result in

(Continued)

III. DISCUSSION

As we have noted, we received three submissions from defendant on July 27, August 2, and August 30, 2016.

In the undated letter we received on July 27, defendant states: “I have written to this address already once, and my letter was returned. When you people decide to hear my story I will write to you—until then, I will be waiting.” The letter does not raise any arguable issues for this court to review.

In his letter dated July 29, which we received on August 2, defendant asks us to “[t]ake a look at” 16 pages of letters and rough drafts of letters addressed to the trial judge discussing his background and the facts of this case. The associated letters do not raise any arguable issues and most of the information they contain was before the trial court. As for issues on appeal, defendant’s cover letter states, “I actually don’t know at all what I should say or go [*sic*] about this appeal situation” and asks us to “knock” a few years off his sentence, without raising any specific or arguable claim of sentencing error. Thus, the July 29 submission does not raise any arguable issue.

In his letter received on August 30, defendant inquires about the status of his appeal and asserts he is “being left in the dark” and not “getting the proper help and representation,” but he does not argue the point further. He also states that prior to embarking on his crime spree, he sought help from a medical doctor for his addiction. He believes his sentence is too long and again requests that it be reduced. But defendant does not identify any particular sentencing error and our review of the record demonstrates that the sentence was appropriate, if not lenient, in the circumstances of this case. The probation department urged the court to impose a much longer sentence of

either a reversal or modification of the judgment *in defendant’s favor*. (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.) In our view, an arguable issue is not one that will result in increased fees and assessments.

31 years. We note that on the carjacking count, the court imposed the lower term based on defendant's "drug addiction and his mental health issues." The court also exercised its discretion to sentence some counts concurrently.

As for defendant's assertions that he is "being left in the dark" and not "getting the proper help and representation" on appeal, by independently reviewing the entire record, we exercise a supervisory role over appointed counsel, ensuring that indigent defendants receive effective assistance on appeal. (*People v. Kelly* (2006) 40 Cal.4th 106, 118–119.)

We have carefully examined the entire record and find no arguable issues on appeal. As to the points raised by appellate counsel, we conclude that in light of defendant's long criminal history and the nature and timing of his prior strike, the court did not abuse its discretion when it denied his *Romero* motion. We also conclude that the court did not abuse its discretion when it denied defendant's *Marsden* motion. (*People v. Silva* (1988) 45 Cal.3d 604.)

IV. DISPOSITION

The judgment is affirmed.

Grover, J.

WE CONCUR:

Rushing, P.J.

Walsh, J.*

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*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.